

Montana Water Court  
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MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Dancing Wind LLC; Diana Rudolph; Lara K.  
Birkes; RML Montana LLC; Melinda A. Thigpen  
Living Trust; Andrea Massey-Farrell; Jo Anne  
Setzer; Max A. Berg; Sue Anne Berg

OBJECTORS: ~~Pauline W. White~~; Melinda A. Thigpen Living  
Trust; Lara K. Birkes; RML Montana LLC

ON MOTION OF THE MONTANA WATER COURT

**CASE 43B-0306-R-2022**

43B 30513-00

43B 30524-00

43B 30530-00

43B 45969-00

43B 101089-00

43B 101091-00

43B 193735-00

43B 30043227

**ORDER APPROVING STIPULATIONS AND CLOSING CASE**

**I. INTRODUCTION**

Claim 43B 45969-00 was called in on motion to review all elements of the claim to determine whether there was a multiple use relationship between that claim and 43B 101089-00. Additionally, the Court's May 31, 2022 *Order Consolidating Case and Order Setting Scheduling Conference* stated the multiple use relationship between 43B 30530-00 and 43B 30513-00 appeared to be inaccurate.

All claims in this case except 43B 45969-00 appeared with issue remarks in the Basin 43B Preliminary Decree. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If

claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Many of the claims received issue remarks identifying a decree exceeded situation. Claim 43B 30530-00 did not receive a decree exceeded issue remark, but it did receive an issue remark stating a late objection had been filed after issuance of the Basin 43B Temporary Preliminary Decree and before the Preliminary Decree. Claims 43B 30524-00 and 43B 193735-00 also received a notice-only issue remark.

The Water Court is required to resolve all objections, on motion issues, and issue remarks.

On January 18, 2023, Melinda A. Thigpen Living Trust, Lara K. Birkes, and RML Montana LLC submitted a *Stipulation and Agreement* to resolve the late objection and corresponding issue remark on claim 43B 30530-00.

On March 24, 2023, Dancing Wind LLC, Diana Rudolph, Andrea Massey-Farrell, Jo Anne Setzer, Max A. Berg, and Sue Anne Berg submitted a *Stipulation* to resolve the issues on the remaining claims in the case.

## II. ISSUES

1. Should the Court approve the stipulations?
2. Is the late objection resolved?
3. Are the issue remarks resolved?

## III. ANALYSIS

### **1. Should the Court approve the stipulations?**

#### **January 18 Stipulation and Agreement**

The January 18, 2023 *Stipulation and Agreement* requests a place of use addition, a change in the multiple use relationship, and an ownership change for claim 43B 30530-00.

#### *Multiple Use Relationship*

The claim appeared in the 43B Preliminary Decree with a remark stating claims 43B 30530-00 and 43B 30513-00 are multiple uses of the same right. The Court's May

31, 2022 *Order Consolidating Case and Order Setting Scheduling Conference* stated the multiple use relationship appeared to be inaccurate.

The *Stipulation and Agreement* is consistent with the Court's determination that the multiple use relationship between claims 43B 30530-00 and 43B 30513-00 is inaccurate. The parties request claim 43B 30530-00 not be identified as a multiple use of 43B 30513-00, and requests 43B 30530-00 be identified as a multiple use of claim 43B 30519-00 instead.

In support of this request, the *Stipulation and Agreement* references RML Montana's October 4, 2022 *Notice of Filing*. RML's water consultant provided analysis of the multiple use relationship between claims 43B 30530-00, 43B 30513-00, and 43B 30519-00. That analysis is attached to the *Notice of Filing*. The analysis states 43B 30530-00 and 43B 30519-00 are multiple uses of the same right because both claims are based on the 150 miner's-inch right decreed to Anna Ryan in Park County District Court Case No. 3191. Claim 43B 30513-00 is based on a different decreed right from Case No. 3191. The multiple use remark should be modified as requested.<sup>1</sup>

#### *Late Objection*

Claim 43B 30530-00 also appeared in the 43B Preliminary Decree with an issue remark regarding a late objection to place of use. The issue remark references a late objection filed by Pauline W. White on August 4, 1987, requesting the addition of the E2SESE Section 36, T3S, R9E to the place of use. The late objection issue remark provided notice to the water users in Basin 43B that the place of use was subject to change. The claim did not receive any objections in the Basin 43B Preliminary Decree.

Melinda A. Thigpen Living Trust, Lara K. Birkes, and RML Montana LLC are the owners of claim 43B 30530-00 and the signers of the January 18 *Stipulation and Agreement*. Through the *Stipulation and Agreement*, the claimants request the addition of the E2SESE Section 36, T3S, R9E to the place of use to resolve Pauline W. White's late

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<sup>1</sup> Claim 43B 30519-00 is not in this case; it was in case 43B-1127-R-2022. Proceedings for that case concluded upon issuance of a *Closing Order* on March 28, 2022. Although many owners of the claim are also parties in this case, the Court will issue an order in case 43B-1127-R-2022 informing all co-owners of 43B 30519-00 that the multiple use information remark has been added.

objection and the related issue remark. The claimants' request indicates they wish to assume, and agree with, Pauline W. White's late objection. Therefore, Melinda A. Thigpen Living Trust, Lara K. Birkes, and RML Montana LLC will be substituted as the objectors in place of Pauline W. White. The caption and service list are updated to remove Pauline W. White as an objector. The caption is updated to add Melinda A. Thigpen Living Trust, Lara K. Birkes, and RML Montana LLC as objectors.

Although the addition of a place of use is an increase, the amended place of use more accurately reflects historical use. The information supplied by the parties overcomes the prima facie status of the place of use and resolves the late objection and the late objection issue remark. The place of use should be amended as requested.

#### *Ownership Change*

Additionally, the parties request removal of West Fork Ranch LLC as an owner of 43B 30530-00. Removal of West Fork as a co-owner is consistent with the February 1, 2023 *Withdrawal of Interest in Water Right Claim 43B 30530-00* filed by West Fork. The Court removed West Fork from the caption and service list in the April 11, 2023 *Order Vacating Scheduling Order and Order Updating Caption and Service List* pursuant to West Fork's *Withdrawal*. West Fork should be removed as an owner of the claim as requested in the January 18 *Stipulation and Agreement* and the February 1 *Withdrawal*.

The January 18 *Stipulation and Agreement* is approved and its terms will be implemented.

#### **March 24 Stipulation**

The March 24 *Stipulation* requests the addition of a flow rate information remark to claims 43B 30513-00, 43B 30524-00, 43B 101089-00, and 43B 101091-00 to resolve the decree exceeded issue. The *Stipulation* also requests a change in the multiple use relationship, ownership, and place of use for 43B 101089-00.

*Decree Exceeded Issue and Flow Rate*

Claims 43B 30513-00, 43B 30524-00, 43B 101089-00, 43B 101091-00, 43B 193735-00, and 43B 30043227 appeared in the Basin 43B Preliminary Decree with the following decree exceeded issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 155 MINER'S INCHES DECREED IN CASE NO. 3191 , PARK COUNTY. 101089-00, 101091-00, 30043227, 30513-00, 30524-00, 193735-00.

The May 31, 2022 *Order Consolidating Case and Order Setting Scheduling Conference* includes a table showing the flow rates for 43B 30513-00, 43B 30524-00, 43B 101089-00, 43B 101091-00, 43B 193735-00, and 43B 30043227, and the total in excess of the 155 miner's inches decreed in Park County District Court Case No. 3191.

The *Stipulation* does not propose reduced flow rates to resolve the decree exceeded issue. Instead, the *Stipulation* requests the addition of the following information remark to claims 43B 30513-00, 43B 30524-00, 43B 101089-00, and 43B 101091-00:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT SHARE A COMBINED 115.5 MINER INCHES OF THE 155 MINER'S INCH DECREED RIGHT IN CASE NO. 3191, PARK COUNTY AND AT NO TIME SHALL THE COMBINED FLOW RATES DIVERTED UNDER OF THE FOLLOWING CLAIMS EXCEED 115.5 MINER'S INCHES.

30513-00 30524-00 101089-00 101091-00

The remark ensures claims 43B 30513-00, 43B 30524-00, 43B 101089-00, and 43B 101091-00 will not exceed a combined flow rate of 115.5 miner's inches. Claims 43B 193735-00 and 43B 30043227 account for the remaining 39.5 miner's inches of the original 155 miner's inch appropriation. The information remark limiting claims 43B 30513-00, 43B 30524-00, 43B 101089-00, and 43B 101091-00 to 115.5 miner's inches resolves the decree exceeded issue. The remark should be added as requested.

### *Multiple Use Relationship*

Claim 43B 101089-00 appeared in the 43B Preliminary Decree with a remark stating claims 43B 101089-00 and 43B 45969-00 are multiple uses of the same right. The Court's May 31, 2022 *Order Consolidating Case and Order Setting Scheduling Conference* stated the multiple use relationship was unclear.

The *Stipulation* clarifies there is not a multiple use relationship between claims 43B 101089-00 and 43B 45969-00. The parties request claim 43B 101089-00 not be identified as a multiple use of 43B 45969-00, and requests 43B 101089-00 be identified as a multiple use of claim 43B 101091-00 instead. The multiple use remark should be modified as requested.

### *Ownership and Place of Use Changes*

In addition to being identified as multiple uses, the *Stipulation* states the ownership and place of use for claims 43B 101089-00 and 43B 101091-00 should be the same. Therefore, the parties request Jo Anne Setzer and Andrea Massey-Farrell be added as co-owners and two places of use be added to 43B 101089-00: the NESE of Section 1, Township 4 South, Range 9 East, and the N2NWSW of Section 6, Township 4 South, Range 10 East, Park County. Dancing Wind LLC is the current owner of claim 43B 101089-00. Dancing Wind signed the *Stipulation* and agreed to the additional owners and places of use. Although the addition of two places of use constitutes an increase, the amended place of use more accurately reflects historical use of claim 43B 101089-00. The information supplied by the parties overcomes the prima facie status of the place of use. The place of use and ownership of 43B 101089-00 should be amended as requested.

The March 24 *Stipulation* is approved and its terms will be implemented.

### **2. Is the late objection resolved?**

The late objection is resolved by implementation of the place of use change requested in the January 18 *Stipulation and Agreement*.

### **3. Are the issue remarks resolved?**

The decree exceeded issue remark is resolved by the addition of the flow rate information remark requested in the March 24 *Stipulation*.

The late objection issue remark on claim 43B 30530-00 is resolved by implementation of the place of use change requested in the January 18 *Stipulation and Agreement*.

Claims 43B 30524-00 and 43B 193735-00 appeared with the following issue remark:

POINT OF DIVERSION AND DITCH NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The issue remark provided water users with notice of standardization of the point of diversion and ditch name elements of the claims pursuant to reexamination orders issued by the Water Court. Water users were given the opportunity to review the claims and file an objection. The deadline to file objections expired. No objections were filed to claims 43B 30524-00 and 43B 193735-00. The issue remark served its notice purpose and can be removed.

All issue remarks are resolved and should be removed.

#### IV. CONCLUSION AND ORDER

The January 18, 2023 *Stipulation and Agreement* is approved. The March 24, 2023 *Stipulation* is approved. The claims should be amended as requested. The issue remarks and the late objection are resolved. The claims will appear in the Basin 43B Final Decree as shown on the post decree abstracts attached to this order.

This case is CLOSED.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

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**Last Order:**  
**Pauline W. White**  
**~~Rt 38 Box 2060~~**  
**~~Livingston, MT 59047~~**  
**(Returned Mail Received 6/6/2022)**

**Note: Caption and Service List Updated 5/2/2023**



**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 30513-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DIANA RUDOLPH  
76 DEEP CREEK ROAD, SOUTH FORK  
LIVINGSTON, MT 59047 9115

DANCING WIND LLC  
C/O RICHARD BERTHY  
11 DREW RD  
SOUTH PORTLAND, ME 04106

**Priority Date:** MAY 22, 1882

**Type of Historical Right:** DECREED

**Purpose (use):** DOMESTIC

**Flow Rate:** 13.46 GPM

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT SHARE A COMBINED  
115.5 MINER INCHES OF THE 155 MINER'S INCH DECREED RIGHT IN CASE NO. 3191,  
PARK COUNTY AND AT NO TIME SHALL THE COMBINED FLOW RATES DIVERTED  
UNDER OF THE FOLLOWING CLAIMS EXCEED 115.5 MINER'S INCHES.  
30513-00 30524-00 101089-00 101091-00

**Volume:** 1.50 AC-FT

**Households:** 1

**Maximum Acres:** 0.25

**Source Name:** SOUTH FORK DEEP CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSESW	32	3S	10E	PARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.25		SENWNW	6	3S	10E	PARK

**Total:** 0.25

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 30524-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DANCING WIND LLC  
C/O RICHARD BERTHY  
11 DREW RD  
SOUTH PORTLAND, ME 04106

**Priority Date:** MAY 22, 1882

**Type of Historical Right:** DECREED

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT SHARE A COMBINED 115.5 MINER INCHES OF THE 155 MINER'S INCH DECREED RIGHT IN CASE NO. 3191, PARK COUNTY AND AT NO TIME SHALL THE COMBINED FLOW RATES DIVERTED UNDER OF THE FOLLOWING CLAIMS EXCEED 115.5 MINER'S INCHES.  
30513-00 30524-00 101089-00 101091-00

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SOUTH FORK DEEP CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWSW	32	3S	10E	PARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DITCH

**Ditch Name:** BOWLES-GIRDLER-NELSON DITCH

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2NW	6	4S	10E	PARK
2			NE	1	4S	9E	PARK

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 30530-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** LARA K BIRKES  
31 DEEP CREEK RD SOUTH FORK  
LIVINGSTON, MT 59047  
  
THIGPEN, MELINDA A LIVING TRUST  
THIGPEN, MELINDA A TRUSTEE  
708 EMERALD BAY  
LAGUNA BEACH, CA 92651  
  
RML MONTANA LLC  
6209 172ND ST SE  
SNOHOMISH, WA 98296 5350

**Priority Date:** MAY 22, 1882

**Type of Historical Right:** DECREED

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SOUTH FORK DEEP CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWSW	32	3S	10E	PARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DITCH

**Ditch Name:** BOWLES-GIRDLER-NELSON DITCH

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSE	31	3S	10E	PARK
2			S2SW	31	3S	10E	PARK
3			E2SESE	36	3S	9E	PARK

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30519-00

30530-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 45969-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DANCING WIND LLC  
C/O RICHARD BERTHY  
11 DREW RD  
SOUTH PORTLAND, ME 04106

**Priority Date:** MAY 22, 1882

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 4.60 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 240.00

**Source Name:** SOUTH FORK DEEP CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWSW	32	3S	10E	PARK

**Period of Diversion:** APRIL 15 TO SEPTEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** BOWLES-GIRDLER-NELSON DITCH

**Period of Use:** APRIL 15 TO SEPTEMBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	40.00		SESW	1	4S	9E	PARK
2	80.00		S2SE	1	4S	9E	PARK
3	60.00		S2SW	6	4S	10E	PARK
4	20.00		NENE	7	4S	10E	PARK
5	40.00		N2NE	12	4S	9E	PARK

**Total:** 240.00

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

45962-00	45963-00	45964-00	45965-00	45966-00	45967-00
45968-00	45969-00	45970-00	45971-00		

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 101089-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DANCING WIND LLC  
C/O RICHARD BERTHY  
11 DREW RD  
SOUTH PORTLAND, ME 04106

JO ANNE SETZER  
PO BOX 1183  
LIVINGSTON, MT 59047 1183

ANDREA MASSEY-FARRELL  
1880 WALKER AVE  
WINTER PARK, FL 32789

**Priority Date:** MAY 22, 1882

**Type of Historical Right:** DECREED

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT SHARE A COMBINED 115.5 MINER INCHES OF THE 155 MINER'S INCH DECREED RIGHT IN CASE NO. 3191, PARK COUNTY AND AT NO TIME SHALL THE COMBINED FLOW RATES DIVERTED UNDER OF THE FOLLOWING CLAIMS EXCEED 115.5 MINER'S INCHES.  
30513-00 30524-00 101089-00 101091-00

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SOUTH FORK DEEP CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWSW	32	3S	10E	PARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DITCH

**Ditch Name:** BOWLES-GIRDLER-NELSON DITCH

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2NW	6	4S	10E	PARK

2	E2NE	1	4S	9E	PARK
3	NESE	1	4S	9E	PARK
4	N2NWSW	6	4S	10E	PARK

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

101089-00

101091-00



**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 101091-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:** DANCING WIND LLC  
C/O RICHARD BERTHY  
11 DREW RD  
SOUTH PORTLAND, ME 04106

JO ANNE SETZER  
PO BOX 1183  
LIVINGSTON, MT 59047 1183

ANDREA MASSEY-FARRELL  
1880 WALKER AVE  
WINTER PARK, FL 32789

**Priority Date:** MAY 22, 1882

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 2.89 CFS

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT SHARE A COMBINED 115.5 MINER INCHES OF THE 155 MINER'S INCH DECREED RIGHT IN CASE NO. 3191, PARK COUNTY AND AT NO TIME SHALL THE COMBINED FLOW RATES DIVERTED UNDER OF THE FOLLOWING CLAIMS EXCEED 115.5 MINER'S INCHES.  
30513-00 30524-00 101089-00 101091-00

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**\*Maximum Acres:** 198.00

**Source Name:** SOUTH FORK DEEP CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWSW	32	3S	10E	PARK

**\*Period of Diversion:** APRIL 15 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** BOWLES-GIRDLER-NELSON DITCH

**\*Period of Use:** APRIL 15 TO OCTOBER 1

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	80.00		E2NE	1	4S	9E	PARK

2	40.00	NESE	1	4S	9E	PARK
3	58.00	W2NW	6	4S	10E	PARK
4	20.00	N2NWSW	6	4S	10E	PARK
<b>Total:</b>						198.00

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

30515-00                      30516-00                      30518-00                      101090-00                      101091-00                      30043227

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

101089-00                      101091-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 193735-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** SUE ANNE BERG  
59 POOL CREEK RD  
LIVINGSTON, MT 59047  
  
MAX A BERG  
59 POOL CREEK RD  
LIVINGSTON, MT 59047

**Priority Date:** MAY 22, 1882  
**Type of Historical Right:** DECREED  
**Purpose (use):** IRRIGATION  
**Irrigation Type:** SPRINKLER  
**Flow Rate:** 224.00 GPM  
**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.  
**Climatic Area:** 3 - MODERATE  
**Maximum Acres:** 14.21  
**Source Name:** SOUTH FORK DEEP CREEK  
**Source Type:** SURFACE WATER  
**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSESW	32	3S	10E	PARK
<b>Period of Diversion:</b>	APRIL 15 TO OCTOBER 15					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	GIRDLER-ALLEN DITCH					
<b>Period of Use:</b>	APRIL 15 TO OCTOBER 15					
<b>Place of Use:</b>						

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	14.21		NESE	1	4S	9E	PARK
<b>Total:</b>	14.21						

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 30043227 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** DIANA RUDOLPH  
76 DEEP CREEK ROAD, SOUTH FORK  
LIVINGSTON, MT 59047 9115

**\*Priority Date:** MAY 22, 1882  
**\*Type of Historical Right:** DECREED  
**\*Purpose (use):** IRRIGATION  
**Irrigation Type:** FLOOD  
**\*Flow Rate:** 220.00 GPM  
**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.  
**Climatic Area:** 3 - MODERATE  
**\*Maximum Acres:** 22.00  
**\*Source Name:** SOUTH FORK DEEP CREEK  
**Source Type:** SURFACE WATER  
**\*Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1		SENWSW	32	3S	10E	PARK	
<b>Period of Diversion:</b>	APRIL 15 TO SEPTEMBER 15						
<b>Diversion Means:</b>	HEADGATE						
<b>Ditch Name:</b>	BOWLES-GIRDLER-NELSON DITCH						
<b>Period of Use:</b>	APRIL 15 TO SEPTEMBER 15						
<b>*Place of Use:</b>							
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	22.00		NWNW	6	4S	10E	PARK
<b>Total:</b>	22.00						

**Remarks:**

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30515-00      30516-00      30518-00      101090-00      101091-00      30043227